

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte REINHOLD SUSSMANN

Appeal No. 95-4148
Application 08/113,661¹

ON BRIEF

Before LYDDANE, ABRAMS, and McQUADE, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

This appeal was taken from the final rejection of claims 1 through 10 and 13 through 21, all of the claims pending in the application.² Upon reconsideration, the examiner has withdrawn all rejections of claims 8 through 10 and 14. Claims 8 through 10 now stand allowed and claim 14, which has been indicated as being allowable if rewritten in independent form,

¹ Application for patent filed August 31, 1993.

² Claim 9 has been amended subsequent to final rejection.

stands objected to as depending from a rejected base claim. Accordingly, the appeal with respect to claims 8 through 10 and 14 is hereby dismissed, leaving for our review the standing rejections of claims 1 through 7, 13 and 15 through 21.

As characterized on page 1 of the appellant's specification, the invention

relates to a shoe with a central closure attached to an instep cover, to which a rope-like tightening element is coupled and from which the tightening element runs back and forth between guide elements on side parts of the shoe upper and guide elements on the instep cover along the throat area of the shoe. More specifically, the invention is directed to such a shoe where guide elements on both sides of the shoe are connected, via a tensioning strip, with at least a pair of instep supporting straps which run over the side parts of the shoe upper from at least an edge area of the sole, one of which is directed toward an area at or behind the metatarsophalangeal joints and the other of which extends rearward toward the heel of [the] shoe.

Claim 1 is illustrative of the subject matter on appeal and reads as follows:

1. Shoe with an upper formed at least in part of an elastically flexible material, a sole to which the upper is attached, an instep cover hinged to the upper at a lower end thereof, a central closure attached to the instep cover in an instep area, a wire-like tightening element coupled with the central closure and running down one side of a throat area of the upper and back up an opposite side thereof to the central closure, at each side of the upper the tightening element running back and forth between guide elements on a tensioning strip and guide elements on the instep cover, each tensioning strip being formed as part of a structural unit for each side of the shoe, said structural unit being a separate and independent part with respect to said instep cover having at least two supporting

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straps which run over the upper to at least an edge area of the sole as permanent parts thereof with the tensioning strip, a first of the supporting straps being directed toward an area at least as far rearward as the metatarsophalangeal joints and a second of the supporting straps extending rearwardly to a heel part of the shoe and at least partially encompasses the heel at least in the edge area of the sole; wherein the tensioning strips have a greater stiffness than the supporting straps; and wherein the tensioning strips, at least in an area at which the guide elements are provided thereon, are made of a material that is abrasion-resistant, hard and of a low coefficient of friction.

The references relied upon by the examiner as evidence of obviousness are:

Spencer	2,591,211	Apr. 1, 1952
Pasternak	4,670,998	June 9, 1987
Bernhard	4,726,126	Feb. 23, 1988
Berger	5,117,567	June 2, 1992

The claims on appeal stand rejected under 35 U.S.C.

§ 103 as follows:

a) claims 1 through 7 and 19 through 21 as being unpatentable over Berger in view of Spencer;

b) claims 13, 15 and 16 as being unpatentable over Berger in view of Spencer, and further in view of Pasternak; and

c) claims 17 and 18 as being unpatentable over Berger in view of Spencer, and further in view of Bernhard.

Reference is made to the appellant's main and reply briefs (Paper Nos. 17 and 19) and to the examiner's answer (Paper No.

18) for the respective positions of the appellant and the examiner with regard to the propriety of these rejections.

Claims 1 and 21, the two independent claims on appeal, recite a shoe having, inter alia, a tensioning strip formed as part of a structural unit for each side of the shoe, with each structural unit having at least two supporting straps which run over the shoe upper to at least an edge area of the sole as permanent parts thereof with the tensioning strip. These claims also require the tensioning strips to have a greater stiffness than the supporting straps.

According to the examiner, Berger teaches, or at least would have suggested, a shoe having such features. In this regard, the examiner states that "[t]he [Berger] supporting straps are made of a transparent or translucent material, see column 11, lines 62-66. The [Berger] tensioning strips are made of a hard material, see column 4, lines 48-54, and therefore have a greater stiffness than the supporting straps" (answer, page 4). The examiner also states that

Berger teaches [at column 17, lines 4 through 8] the tensioning strips having a hardness of about 60 to 70 Shore **A** and is silent with regard to the hardness of the straps (41,42). The selection of the [S]hore D hardness for the tensioning strips and straps of Berger, would appear to constitute no more than optimization of hardness by routine experimentation

inasmuch as a number of hardnesses appear suitable depending on the individual wearer [answer, page 6].

Berger discloses a variety of tensioning strip/supporting strap structural units for use on a shoe, and contains a fair suggestion that certain attributes of each may be mixed and matched. Berger, however, does not teach and would not have suggested a shoe having structural units meeting the above noted limitations in claims 1 and 21. The mere fact that Berger's tightening bands or supporting straps may be made of a transparent or translucent material as disclosed at column 11, lines 62-66 and that Berger's closing flaps or tensioning strips may be made of a hard elastic material as disclosed at column 4, lines 48-54 does not provide any reasonable basis for the examiner's determination the tensioning strips have a greater stiffness than the supporting straps. Nor does Berger's discussion of the Shore A hardness of the closing flaps or tensioning strips provide any suggestion that the stiffness of these strips is, or should be, greater than that of the tightening bands or supporting straps. Spencer, Pasternak and/or Bernhard are of no avail to the examiner in this regard since they do not cure the noted deficiencies of Berger vis-a-vis the subject matter recited in claims 1 and 21.

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Accordingly, we shall not sustain the standing 35 U.S.C.
§ 103 rejection of claims 1 and 21, or of claims 2 through 7, 13
and 15 through 20 which depend therefrom.

The decision of the examiner is reversed.

REVERSED

WILLIAM E. LYDDANE)	
Administrative Patent Judge)	
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)	
)	
)	BOARD OF PATENT
NEAL E. ABRAMS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
JOHN P. McQUADE)	
Administrative Patent Judge)	

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APPLICATION NO. 08/113,661

APJ McQUADE

APJ ABRAMS

APJ LYDDANE

DECISION: **REVERSED**

Typed By: Jenine Gillis

DRAFT TYPED: 25 Nov 98

FINAL TYPED: